

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

PAULA A. BOGGS
38015 Chestnut Ridge Road
Elyria, OH 44035

and

RANDALL BOGGS
38015 Chestnut Ridge Road
Elyria, OH 44035

Plaintiffs,

vs.

UNITED STATES OF AMERICA
C/O
Office of the United States Attorney
801 West Superior Avenue, Suite 400
Cleveland, OH 44113

Defendant.

* Case No.

* Judge

* **COMPLAINT FOR DAMAGES**
* **UNDER THE FEDERAL TORT**
* **CLAIMS ACT WITH JURY DEMAND**

* **Michael D. Bell (#0071325)**
* **Kevin J. Boissoneault (#0040180)**

* **GALLON, TAKACS &**
* **BOISSONEAULT CO., L.P.A.**

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Now come Plaintiffs, by and through counsel, and for their Complaint, state and aver the following:

INTRODUCTION

1. This is an action against Defendant, the United States of America, under the Federal Tort Claims Act, (28 U.S.C. §2671, *et seq.*) and 28 U.S.C. § 1346(b)(1), for negligence in connection with injuries sustained by Plaintiff Paula Boggs at the United States Post Office located at 439 West Fourth Street in Lorain, Ohio.

2. The claims herein are brought against the Defendant pursuant to the Federal Tort Claims Act, (28 U.S.C. § 2671, *et seq.*) and 28 U.S.C. § 1346(b)(1), for money damages as compensation for personal injuries caused by the Defendant's negligence.
3. On February 25, 2019, prior to the commencement of this action and within two years of its accrual, Plaintiff Paula Boggs submitted an Administrative Claim for the action set forth below to the United States Postal Service, and fully complied with the provisions of 28 U.S.C. §2675 of the Federal Tort Claims Act.
4. Pursuant to 28 U.S.C. §2675(a) of the Federal Tort Claims Act, "An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail." Plaintiff Paula Boggs received, via counsel, such a denial on or about April 9, 2020. Plaintiffs are now filing this Complaint and seek remedy in accordance with 28 U.S.C. § 2401(b) and 39 CFR §912.9(a).

THE PARTIES

5. At all relevant times, Plaintiffs resided in Elyria, Lorain County, Ohio.
6. Defendant, the United States of America, through its agency, the United States Postal Service, operated, controlled, leased, managed and/or maintained the United States Post Office located at 439 West Fourth Street in Lorain, Ohio.
7. Pursuant to Fed. R. Civ. P. 4(i)(1), Defendant, the United States of America, may be served by delivering a copy of the summons and the Complaint to the United States Attorney for

the Northern District of Ohio, and by also sending a copy of the summons and the Complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia.

JURISDICTION AND VENUE

8. The Court has jurisdiction over the lawsuit according to 28 U.S.C. § 1346(b)(1).
9. Venue in this district is proper under 28 U.S.C. § 1391(e) and 28 U.S.C. § 1402(b) in that Plaintiff resides in the Northern District of Ohio, and in that all, or a substantial part of the acts and omissions complained of occurred within this judicial district.

GENERAL ALLEGATIONS

10. On or about July 3, 2017, Plaintiff Paula Boggs was within the course and scope of her employment with United Parcel Service (hereinafter “UPS”), making deliveries to the Defendant, and was exiting her UPS vehicle at the United States Post Office located 439 West Fourth Street in Lorain, Ohio.
11. At the same time and location, Plaintiff placed her hand onto a railing of a walkway for support while exiting her vehicle when the rusted railing collapsed, causing Plaintiff to fall.
12. As a result of the incident, Plaintiff Paula Boggs sustained injuries to her left arm.

COUNT ONE

13. Plaintiffs re-allege and incorporate by reference the above paragraphs as if the same were fully set forth herein.
14. At all relevant times, a property owner, lessee, and/or operator owes a duty to business invitees, employees, agents, contractors, and/or subcontractors to exercise ordinary care and to protect such individuals by maintaining the premises in a reasonably safe condition, and to ensure that safety equipment is properly erected, inspected, maintained, and that no

hidden dangers exist while performing their duties on the premises.

15. On or about July 3, 2017, Defendant the United States of America breached this duty of care to Plaintiff Paula Boggs when it failed to maintain the premises in a reasonably safe condition, and failed to adequately erect, inspect, and/or maintain the railing that was knowingly being used by the Plaintiff and others, when making deliveries. In particular, the railing at issue was in disrepair and/or rusted at the base, from lack of maintenance and/or adequate inspection.

16. As a direct and proximate result of the negligence of Defendant the United States of America, Plaintiff Paula Boggs sustained permanent and severe injuries and damages, including, but not limited to, the following:

- a. Strain of the left elbow and bicep, and a tear of the left bicep tendon;
- b. Medical expenses, past and future;
- c. Pain and suffering, past and future;
- d. Wage loss, past and future; and,
- e. Loss of enjoyment of life, past and future.

COUNT TWO

17. Plaintiffs re-allege and incorporate by reference the above paragraphs as if the same were fully set forth herein.

18. As a direct and proximate result of the incident, Plaintiff Randall Boggs sustained the loss of services, society, and consortium of his wife, Plaintiff Paula Boggs.

WHEREFORE, Plaintiffs respectfully pray for judgment on the above mentioned Counts against Defendant in a sum of money in excess of Seventy-Five Thousand Dollars and No Cents (\$75,000.00), plus costs and expenses incurred herein, prejudgment interest at the highest statutory rate allowed from the time that Plaintiff's cause of action accrued, court costs, and such other relief as the Court deems just and equitable.

Respectfully submitted,

**GALLON, TAKACS & BOISSONEAULT
CO., L.P.A.**

By: /s/ Michael D. Bell
Michael D. Bell
Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs herein demand a trial by jury on all issues so triable in this action.

Respectfully submitted,

**GALLON, TAKACS & BOISSONEAULT
CO., L.P.A.**

By: /s/ Michael D. Bell
Michael D. Bell
Attorneys for Plaintiffs